



कायालिय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL
ECONOMIC ZONE, MUNDRA-370421**

સ્વત્ત્સાધન
Azadi Ka
Amrit Mahotsav

A. File No.	: GEN/ADJ/COMM/193/2022-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	: MUN-CUSTM-000-COM-01-23-24
C. Passed by	: Shri T.V. Ravi Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	: 08.05.2023 08.05.2023
E. SCN No. & Date	: F. No.DRI/AZU/GRU/CIGARETTES/INT-42/2015-16 dated 02.05.2016 (Denovo Case)
F. Noticee(s)/Co-noticee(s)	: Mr. Ankit D. Changani Partner M/s. Amardeep Exports (100%) EOU, Plot No. 414 & 417, Phase-II, GIDC, Dared, Jamnagar-361006.
G. DIN	: 20230571MO0000222AOF

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है। Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर,
बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"
"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor,
Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge,
Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो। 5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितटिभूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीय कृत बैंक की एक शाखा पर बैंक ड्राप्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

On the basis of an intelligence that contraband goods were being smuggled into India by concealing in container bearing No. IALU2252554, the goods imported in the said container were examined at Mundra Port (at Transworld CFS) by the officers of Directorate of Revenue Intelligence ("DRI" for short) vide Panchanama dated 04.11.2015. The goods imported in said container under Bill of Lading No. JEAMUN044235 dated 25.10.2015, Commercial Invoice No. AMGT/021/2015 dated 18.10.2015 were sought clearance for warehouse under Warehouse Bill of Entry No. 3140016 dated 03.11.2015 filed by Customs Brokers M/s. Lara Exim Private Limited on behalf of the importer M/s. Krishna Brass Industries, Plot No. 3962, GIDC, Phase-III, Dared, Jamnagar (IEC No. 2414004193) (hereinafter also referred to as "said importer / said unit").

2. The description of the goods imported in Container bearing No. IALU2252554 and sought clearance for warehousing under Bill of Entry No. 3140016 dated 03.11.2015 was given as "Mix Metal Brass Scrap with other impurities" (hereinafter also referred to as "declared goods") as per Bill of Lading, Commercial Invoice and Bill of Entry. However, upon examination by officers of DRI under above stated Panchanama dated 04.11.2015, the said Container No. IALU2252554 was found stuffed with 60 boxes of Cigarettes concealed behind Jumbo bags containing brass scrap. The total quantity of cigarettes found packed in 60 boxes was ascertained to be 24,59,400 cigarette sticks of Mond Superslims, Marso Superslims, Richman Superslims and Malimbo Superslims each having length 10 CM (aprox) packed in 12,297 packets each of which was packed with 10 smaller packets and each such smaller packet containing 20 cigarette sticks. Representative samples were drawn from the cigarettes vide same Panchanama dated 04.11.2015, inter alia, for the purpose of inspection and valuation by Chartered Engineer / Valuer. In addition to cigarettes, Brass Scrap, un-used articles of brass, scrap of radiators and metallic ingots were found stuffed in the Container. The weight of metallic ingots was ascertained and found to be 5175 Kgs. Further examination of these remaining goods was not carried out on 04.11.2015 and the said goods were re-stuffed back into the same container. The premises of M/s. Krishna Brass Industries, Jamnagar situated at Plot No. 3962, GIDC, Phase-III, Dared, Jamnagar was searched by officers of DRI vide a separate Panchanama dated 04.11.2015 and relevant documents / records were withdrawn.

3. Examination of remaining goods of Container bearing No. IALU2252554:

3.1 The goods, other than cigarettes, imported in Container No. IALU2252554 were examined in detail by officers of DRI vide Panchanama dated 18.02.2016 in presence of Chartered Engineer and Government approved Valuer Shri Anwar Kukad. During the Panchanama proceedings, he minutely examined the unused items of brass appearing to be finished goods of prime quality mixed with other used / scrap material and opined that the said items were couplers and that the said items were looking like prime quality goods but their grooves were in damaged condition and hence the said items were not capable of being used as such and thus were rejected / scrap material. He opined that the whole mixture of used and unused items was brass scrap in mixed condition. In respect of other two type of goods, Shri Anwar Kukad, opined that the said items were scrap of old and used radiators and ingots of cast iron, respectively.

3.2 On the basis of Panchanama dated 04.11.2015 and 18.02.2016, the description of the goods found stuffed in the Container bearing No. IALU2252554 and their respective quantities are summarized as under:

Table - 1

Sr. No.	Description	Quantity
1	Cigarettes (of length 10 Centimeters)	24,59,400 sticks
2	Mixture of Brass scrap and unused items of brass (opined to be "brass scrap" by Chartered Engineer)	12830 Kgs
3	Scrap of radiators	1930 Kgs
4	Metallic ingots (opined to be "Cast Iron ingots" by Chartered Engineer)	5175 Kgs

The above mentioned goods were placed under seizure vide Panchanama dated 04.11.2015 and 18.02.2016.

Statements of concerned persons

4. Summons were issued to Mr. Vijay Vasarambhai Sabhaya, Proprietor of M/s. Krishna Brass Industries, Jamnagar and Shri Shailesh Patel for recording of their statements. Both Mr. Vijay Vasarambhai Sabhaya and Shri Shailesh Patel did not honour summons and instead approached Hon'ble High Court of Gujarat. Subsequent to disposal of their Special Criminal Application No. 6814/2015 by Gujarat High Court, they approached the Additional Sessions Court, Kutch (At Gandhidham). They only appeared for recording of their statement on the directions of Hon'ble Additional Sessions Court. Statements of the other persons concerned with above mentioned consignments and that with the import and clearance for warehousing of import goods in the name of M/s. Krishna Brass Industries, Jamnagar were also recorded, which are discussed briefly in succeeding Paras.

4.1 Statement of Shri Sabu George "G" Card Holder of Customs Broker firm M/s. Lara Exim Pvt. Ltd. Gandhidham was recorded under Section 108 of the Customs Act, 1962, on 06.11.2015 wherein he, inter alia, stated that M/s. Krishna Brass Industries, Dared, Jamnagar was a 100 % Export Oriented Unit and they imported mixed brass scrap; that person in contact with them was Shri Vijay Patel, proprietor of M/s. Krishna Brass Industries, Jamnagar; that he used to talk with him on mobile No. 9898596615. On being asked specifically he stated that Shri Vijay Patel, Proprietor of M/s. Krishna Brass Industries had contacted him on his mobile no. 9426214521 on Monday (02.11.2015) and informed him that he would send documents pertaining to Container bearing No. IALU2252554 and asked him for clearance of the goods; that on Tuesday (03.11.2015) he received documents through Maruti courier and accordingly Bill of Entry No. 3140016 dated 03.11.2015 was filed; that Shri Vijay Patel enquired about clearance of container in evening (03.11.2015); that on 04.11.2015, on learning about the container being examined by DRI, Shri Vijay Patel phoned him and told that import matter was being looked after by Shri Shailesh Patel and that he (Vijay Patel) had made him (Shailesh Patel) Partner in M/s. Krishna Brass Industries, Jamnagar.

4.2 Statement of Shri Vijay Vasrambhai Sabhaya proprietor of M/s. Krishna Brass Industries, Jamnagar, was recorded under section 108 of the Custom Act 1962 on 20.01.2016, wherein he inter alia, stated that he was using mobile No. 9898596615 and 7600000301; that in the years 2005 he started firm in the name and style of M/s. Krishna Brass Industry; that around one year ago he converted the said firm into a 100% EOU on advice of Mr. Ankitbhai of M/s. Amardeep Exports and Mr. Babubhai of M/s. Deep Industries; that in the month of July-August 2015, he made Shri Shaileshbhai Damjibhai Patel as his partner in M/s. Krishna Brass Industries; that they both had understanding that after completion of legal procedures for the partnership he (vijay) was to relinquish partnership and Shri Shaileshbhai was to become the owner; that in the month of July 2015 he had given Power of Attorney of M/s. Krishna Brass Industries to Shri Shaileshbhai; that Shri Shaileshbhai was handling the work of M/s. Krishna Brass Industries; that the Cigarettes recovered from imported container were imported by Shri Shaileshbhai; that Shri Shaileshbhai had informed him that after arrival of Cigarette in Jamnagar, the supplier (Dubai) was to inform him on phone as to where the cigarettes were to be delivered.

4.3 Further statement of Shri Vijay Vasrambhai Sabhaya was recorded under section 108 of the Custom Act 1962 on 21.01.2016, wherein he inter alia stated, that on 05.11.2015 he had broken the mobile phone being used by him fearing that DRI may take data from the mobile; that all the mails had been deleted from the mail ID of his firm (krishnbraessind@gmail.com) for fear of mails being seen by DRI; that till date neither he had made any call abroad nor received any call from abroad on his mobile phone except for one call from America; that the said phone (M No. 9898596615) has not been given to anyone for use. On being asked he stated that he personally used to talk on phone with Customs

Broker Mr. Sabu George; that he was introduced to Customs Broker by Mr. Ankitbhai Changani of M/s. Amardeep; that all his imports have been brought through Ankitbhai.

4.4 Further statement of Shri Vijay Vasrambahai Sabhaya was recorded under section 108 of the Custom Act 1962 on 08.02.2016, wherein he inter alia, stated that he used to inform Ankitbhai about his brass requirement; that Mr. Ankitbhai used to contact some party in Dubai; that after that he used to receive contract copy on his email; that in some cases documents used to be received through banks and in others through courier. On being asked he stated that Shri Shaileshbhai has not made any investment in his firm; that container No. IALU 2252554 & IPXU 3062264 were booked by Shri Shaileshbhai. On being asked he stated that Mr. Anil Parmar was native of Jamnagar; that previously he had a factory in G.I.D.C. Dared, Jamnagar; that two years ago he has sold his factory and went to Dubai and joined M/s. Alliance Metal General Trading LLC Dubai.

4.5 Statement of Shri Shailesh Damjibhai Patel was recorded on 01.02.2016 under section 108 of the Customs Act, 1962, wherein he inter alia, stated that during 2015 he went to Mumbai; that in one Bar, he met one person Mr. Shoyaib who told him that he could give many business idea to make speedy money; that he again went to Mumbai in March 2015 and met Mr. Shoyaib who lured him to import cigarettes in the guise of brass scrap; that he told him to manage the Import and Export procedure and offered Rs. 8 to 10 lacs per container; that to manage import export procedure he joined M/s. Krishna Brass Industries, Jamnagar during July August 2015; that Partnership Deed was made on 11/8/2015 and thereafter he had taken over functions of the factory.

4.6 Further statement of Shri Shailesh Damjibhai Patel was recorded on 03.02.2016 under section 108 of the Customs Act, 1962, wherein he inter alia, stated that Mr. Shoyaib had dispatched the container of cigarette from Dubai to Mundra Port; on the day of seizure of cigarettes, Mr. Shoyaib phoned him and informed about seizure. On being asked he stated that he used to talk with Shoyaib from separate mobile, which he has broken; that he did not remember the said mobile number; that the cigarettes from the container were to be taken out by Mr. Shoyaib from container on the way to Jamnagar.

4.7 Further statement of Shri Shailesh Damjibhai Patel was recorded on 18.04.2016 under section 108 of the Customs Act, 1962. During the recording of statement he promised to provide contact details of Mr. Shoyaib and his mobile No. through which he used to talk to Mr. Shoyaib. On being asked he stated that he has invested around Rs. 30 to 40 lakhs in M/s. Krishna Brass Industries, Jamnagar in cash prior to seizure of cigarettes by DRI. On being asked specifically he stated that he had falsely pleaded before Additional Sessions Court, Gandhidham that he was not aware of the goods (cigarettes) imported in Container No. IALU2252554 to obtain anticipatory bail; that he knew that the cigarettes were smuggled in said container; that said container of cigarettes was booked through email of M/s. Krishna Brass Industries, Jamnagar but they deleted the mails to destroy evidence. On being asked he further stated he was get commission 8 to 12 lakhs for the said container of cigarettes; that he had never talked to foreign supplier except on one occasion; that he did not know Mr. Anil Parmar.

4.8 Statement of Mr. Jayshukh Muljibhai Ranpariya, was recorded on 19.04.2016 under section 108 of the Customs Act, 1962, wherein he inter alia stated that, around one year ago (approx April 2015) he had made a visit to U.A.E. along with Mr. Ankit D. Changani for initiating import export work; that there he, inter alia, met Mr. Sanjay Shastri and Mr. Rishit Nilesh Bhandari; that he came to know that Mr. Sanjay Shastri and Mr. Rishit Nilesh Bhandari were running business of importing brass articles from India in the name of M/s. Secure Link General Trading LLC, Dubai. On being asked specifically he stated that in one of his subsequent visit to U.A.E. he met Mr. Anil Parmar; that till one and half year ago said Mr. Anil Parmar used to handle his business of wooden gift articles in Jamnagar; that Mr. Anil Parmar was partner in M/s. Alliance Metal General Trading LLC, Dubai; that he (Jayshukh) imported two containers of Zinc Scrap from Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai; that he used to talk to Mr. Anil Parmar on his mobile No. 971522726864 (U.A.E.) and 7874122917 (India).

4.9 Statement of Shri Ankit Dineshbhai Changani, Partner of M/s. Amardeep Exports, (100%) EOU, Plot No. 414 & 417, Phase-II, GIDC, Dared Jamnagar was recorded under Section 108 of the Customs Act, 1962, on 22.02.2016. On being asked specifically he stated that he had not made payment to foreign suppliers in respect of about 6-7 import consignments; only in respect of one import consignments imported from M/s. Alliance Metal General Trading LLC, Dubai payments has been made by him and in respect of subsequent 6-7 import consignments payment has not been made by him. On being asked as to how could any supplier keep supplying goods to him when payment in respect of all most all the consignments has not been made, he stated that Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai was personally known to him; that he (Mr. Anil Parmar) was resident of Jamnagar.

4.10 Further statement of Mr. Ankit Dineshbhai Changani was recorded under Section 108 of the Customs Act, 1962, on 09.03.2016. On being asked specifically he stated that he used to talk with foreign suppliers / buyers and help Mr. Vijay Patel (Sabhaya) in placing orders for import and in finding orders for export. On being asked specifically he stated he had not received import documents in respect of import consignment arrived in container No. TTNU3535220 in vessel MV Chicago on 07.11.2015; that he had last talked with Mr. Anil Parmar in last week of October or First week of November; that he (Anil Parmar) did not tell anything about the said consignment sent in container No. TTNU 353220; that Mr. Anil Parmar may have tried to smuggle cigarettes in container No. TTNU 353220 with hope that his (Mr. Ankit D. Changani) financial position was very weak and he may agree to clear the container on persuasion.

4.11 Statement of Mr. Bhupinder Singh Saini of M/s. Radiant Maritime India Pvt. Ltd., Gandhidham (Shipping Line Agent) was recorded under Section 108 of the Customs Act, 1962, on 18.01.2016, wherein he inter alia stated that container Nos. IPXU3062264 & TTNU3535220 loaded on MV Chicago from Dubai for consignees M/s. Krishna Brass Industries, Jamnagar and M/s. Amardeep Exports, Jamnagar were to be discharged at Mundra Port; that the said containers were not unloaded at Mundra port and returned back to Dubai; that the said two containers were returned back on the instructions of Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai received by them through their Dubai counterpart M/s. Asian Tiger Shipping LLC, Dubai; that Mr. Anil Parmar used mobile No. 00971522726864.

4.12 Statement of Mr. Sachin S. Naik, Regional Manager of M/s. MBK Logistix Private Limited, Gandhidham-Kutch was recorded under Section 108 of the Customs Act, 1962, on 02.03.2016 wherein, he inter alia, stated that container Nos. TTNU3535220 and IPXU3062264 were loaded from Dubai on MV Chicago, on behalf of M/s. Asian Tiger Shipping LLC, Dubai (Shipping Line Agent, Dubai) for Discharge at Mundra Port; that in India, M/s. Radiant Maritime India Pvt. Ltd., are the agents of M/s. Asian Tiger Shipping LLC, Dubai; that the said containers were not unloaded at Mundra Port and returned back to Dubai on same vessel as per instructions received from M/s. Asian Tiger Line, Dubai through their principal M/s. Simatech Shipping LLC, Dubai (Vessel Owners).

5. Inspection of another consignment of smuggled cigarettes imported in the name of M/s. Krishna Brass Industries, Jamnagar:-

5.1 The subject cigarettes brought in Container No. IALU2252554 were not declared in Import General Manifest in contravention of Section 32 of Customs Act, 1962 and wrong declaration was filed vide Bill of Entry No. 3140016 dated 03.11.2015 in contravention of Section 46 (4) of Customs Act, 1962 and thus import of these-subject cigarettes is illegal import in terms of Section 11A (a) of Customs Act, 1962. In addition to the consignment of cigarettes illegally imported in concealed manner in Container No. IALU2252554, further intelligence available with DRI had indicated that two more consignments of Cigarettes were dispatched by the same Shipper to India in container Nos. IPXU3062264 & TTNU3535220 one in the name of M/s. Krishna Brass Industries, Jamnagar and the other in the name of M/s. Amardeep Exports, Jamnagar. Later on, it was revealed that the said two containers

were loaded on MV Chicago from Jebel Ali Port for import to India to be discharged at Mundra Port. The said vessel arrived at Mundra Port on 07.11.2015, but by that time the consignees and the shipper had become aware of the seizure of cigarettes from Container No. IALU2252554 by DRI and Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai asked the Shipping line to recall the said two containers (IPXU3062264 & TTNU3535220). As such said two containers were not un-loaded at Mundra Port and returned back to Dubai. These facts have been independently confirmed by Mr. Bhupinder Singh Saini of M/s. Radiant Maritime India Pvt. Ltd., Gandhidham (*Shipping Line Agent*) and Mr. Sachin S. Naik of M/s. MBK Logistix Private Limited, Gandhidham (*vessel agent*) in their respective statements recorded on 18.01.2016 and 02.03.2016 under provisions of Section 108 of Customs Act, 1962. On being asked Mr. Bhupinder Singh Saini stated that Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai had contacted M/s. Asian Tiger Shipping LLC, Dubai (*Dubai counter part of Shipping Line Agent*) to call back the said two containers and submitted copy of the letter dated 05.11.2015 signed by Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai and that he (Anil) used mobile No. 00971522726864. He also submitted draft of Bills of Lading bearing No. ATSJEAMUN153177 and ATSJEAMUN153178 in respect of return voyage for said containers.

5.2 The description of goods said to be stuffed in said two containers IPXU3062264 & TTNU3535220 was declared as "Mix metal brass scrap with other impurities" in these Bills of Lading. The goods stuffed in containers on their return to Dubai were got inspected by Dubai Customs through Consulate General of India, Dubai. It has been informed by Consulate General of India, Dubai vide letter F. No. CE/IV/X/1/2015 dated 13.12.2015, that the said two containers IPXU3062264 & TTNU3535220 were inspected in presence of representative of Exporter (Shipper) and found to be full of Cigarettes. From the above facts, it appears that smuggling syndicate involving Mr. Shailesh Patel, Mr. Vijay Sabhaya proprietor of M/s. Krishna Brass Industries, Mr. Shoyaib of Mumbai, Mr. Ankit Changani, Mr. Anil Pramar of M/s. Alliance Metal General Trading LLC, Dubai have illegally imported subject cigarettes in container No. IALU2252554 and thereafter attempted to smuggle more consignments of cigarettes in container No. IPXU3062264 & TTNU3535220 one in the name of M/s. Krishna Brass Industries and other in the name of M/s. Amardeep Exports. Since the syndicate got alerted by seizure of cigarettes on 04.11.2015, they got the subsequent consignments of cigarettes en route to Mundra in container Nos IPXU3062264 & TTNU3535220 through Mr. Anil Parmar. He requested the Shipping Line on 05.11.2015 to call the containers back to Dubai.

6. Rejection of declared value of import goods and determination of actual value:-

6.1 The goods imported in Container bearing No. IALU2252554 were declared as "Mix Metal Brass Scrap with other impurities" in the commercial invoice, Bill of Lading and in the Bill of Entry No. 3140016 dated 03.11.2015. Further, the quantity of subject import goods was declared as 22,260 Kgs. The examination of the goods stuffed in Container bearing No. IALU2252554 at Mundra Port (Transworld CFS) has revealed that in addition to declared goods, 24,59,400 Cigarettes Sticks packed in 60 boxes and 5175 Kgs of Cast Iron ingots were also found stuffed with import goods in concealed manner. Since the quantity of the "Mix Metal Brass Scrap with other impurities" has been found to be grossly mis-declared the value of the said goods is liable to be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, the other goods viz Cigarettes and Cast Iron Ingots found stuffed with the import goods in the Container bearing No. IALU2252554 were not declared in the import documents. Therefore, the value of all the goods found in import Container bearing No. IALU2252554 is required to be determined in accordance with provisions of Section 14 of Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

6.2 Whereas, for the purpose of the levying duty on import goods the value of the goods is determined in accordance with provisions of Section 14 of Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, in respect of certain goods that include all types of Brass Scrap, tariff values are fixed in terms of Section 14 (2) of Customs Act, 1962. The Tariff value applicable for Brass Scrap w.e.f.

30th October 2015 is USD 3117 per metric tonne. An Annexure III calculating the Assessable value on the basis of Tariff Value of Brass is attached with the SCN. As per Annexure III the Assessable value of 12,830 Kgs Mixed Brass Scrap (Honey) is arrived at Rs. 26,13,419/- and that of 1,930 Kgs of Scrap of old and used Radiators is arrived at Rs. 3,93,133/-.

6.3 Whereas **Rule 3** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, provides the method of valuation. Rule 3(1) of the Customs Valuation Rules, 2007 provides that “*subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10*”. Rule 3(4) ibid states that “*if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 of Custom Valuation Rules, 2007*”. Rule 4 (1) (a) of the said Rules stipulates determination of value of goods on the basis of value of identical goods and Rule 5 (1) provides for value on the basis of value of similar goods. However, neither the import of goods identical to subject goods (i.e. cigarettes of brands Mond / malimbo, Marso etc of length more than 85 MM and Cast Iron Ingots) nor of goods similar to subject goods was available in the Import data. After exhausting options of Rule 4 and Rule 5, the value of the import goods is determined by deductive method in terms of Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

6.4 Accordingly samples of cigarettes drawn under Panchanama dated 04.11.2015 were sent to Chartered Engineer and Government approved Valuer Shri Anwar Kukad vide letter F. No. DRI/AZU/GRU/Cigarettes/Int-42/2015 dated 16.11.2015 for the purpose of Examination and suggesting their value. Shri Anwar Kukad vide his Certificate AYK:VAL:0342:2015 dated 18.11.2015 suggested market value of different flavours of the cigarettes. As per the same certificate dated 18.11.2015, **the length of the cigarettes was certified to be 10 CM i.e. 100 MM**. Accordingly, the aggregate Market Value of 24,59,400 Cigarettes Sticks, as ascertained in Annexure IV to SCN was found to be **Rs. 1,36,02,450/-**. By making a provision of 20 % towards profit margin and transportation cost, the Cum Duty Price of the said 24,59,400 Cigarettes Sticks is ascertained as **Rs. 1,33,06,096/-** and value in terms of Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as **Rs. 14,81,771/-**.

6.5 As discussed at Para 3 above, during the second examination of goods of Container bearing No. IALU2252554 on 18.02.2016, the goods were examined in presence of the Shri Anwar Kukad, Chartered Engineer and Government Approved Valuer. He had opined vide Certificate AYK : VAL : 0404 : 2016 dated 20.04.2016 that Mixed Brass metal Scrap was covered under ISRI Code “Honey” and that the scrap of old and used radiators was covered under ISRI Code “Ocean”. He has suggested their market value to be Rs. 293 per Kg and Rs. 310 per Kg, respectively. Further vide the same Certificate No. dated 20.04.2016 market price of Cast Iron Ingots is suggested as **Rs. 35 per Kg**. Accordingly, the aggregate Market Value of 5175 Kgs of Cast Iron ingots, as ascertained in Annexure II to SCN is found to be **Rs. 1,81,125/-**. By making a provision of 20 % towards profit margin and transportation cost, the Cum Duty Price of the said 5175 Kgs of Cast Iron ingots is ascertained as **Rs. 1,55,866/-** and value in terms of Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as **Rs. 1,26,294/-**.

Liability of the Goods to Confiscation

7.1 As per Bill of Lading, Commercial invoice and Bill of Entry No. 3140016 dated 03.11.2015, the goods imported under Container bearing No. IALU2252554 were “Mix Metal Scrap with other impurities”. However upon examination the goods found stuffed in the said container were Cigarettes; Brass Scrap ; Scrap of old and used Radiators and Cast Iron ingots. These facts reveal that Cigarettes and Cast Iron ingots have been illegally imported into India in Container No. IALU2252554 without being declared in the relevant import documents and in Bill of Entry filed for clearance for warehousing thereof. Further the quantity of “Mix Metal Brass Scrap with other impurities” was declared as 22,260 Kgs in the import documents and the same has been found to be 14760 Kgs as per examination of the goods. Further, Shri Shailesh Patel, the power of attorney holder in M/s. Krishna Brass Industries, Jamnagar, has independently admitted in his statement recorded Section 108 of

Customs Act, 1962 that cigarettes in Container No. IALU2252554 were imported into India illegally by him with the help of Mr. Shoyaib of Mumbai. He further stated that the said cigarettes were to be taken out from the container on the way to Jamnagar. M/s. Krishna Brass Industries, Jamnagar being 100% EOU, its import containers was not to be opened at port of import but to be examined in factory by the Jurisdictional Central Excise Officers. Statement of Shri Vijay Sabhaya proprietor of M/s. Krishna Brass Industries, Jamnagar was recorded. Both, Shri Vijay Sabhaya and Shri Shailesh have stated in their respective statements that Partnership deed making Shri Shailesh Patel partner in M/s. Krishna Brass Industries, Jamnagar had been executed in August 2015 and Shri Shailesh Patel was looking after all types of work in M/s. Krishna Brass Industries, Jamnagar.

7.2 Thus it appears that

(i) (a) 24,59,400 sticks of cigarettes found packed in 60 boxes in Container No. IALU2252554 have been imported illegally into India without the same being declared in the import documents and in Bill of Entry No. 3140016 dated 03.11.2015. The said cigarettes were also not declared in the Import General Manifest filed in respect of the goods imported in vessel OEL Emirates. Further, Shri Shailesh admitted in his statement that the said illegally imported cigarettes were to be taken out from container on the way to their factory i.e. without any order of proper officer of Customs. Further, during examination of goods of Container No. IALU2252554 on 04.11.2016, the cigarettes were found to be concealed in 60 boxes behind Jumbo bags containing mixed brass scrap. By the above stated acts, the subject smuggled 24,59,400 Cigarettes sticks, having market value of Rs. 1,36,02,450/- have been rendered liable to confiscation as per provisions of Section 111 (f), 111 (l), 111 (j), and 111 (i) of Customs Act, 1962.

(b) Further as per Para 9.4 of **Foreign Trade Policy 2015-2020** effective w.e.f. April 2015, "**Prohibited**" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted. Further, in terms of General Note 13 (regarding Import Policy) of the schedule to the Customs Tariff Act, 1975, the import of Cigarettes or any Other Tobacco Product is subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 as notified by the Ministry of Health & Family Welfare. The above provisions imply that import of cigarettes which do not bear specified health warnings on their packages is prohibited as per Foreign Trade Policy and can't be imported / allowed to be cleared from Customs. The subject Rules as amended by Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014, require that **the specified health warning should cover at least 85% of Principal Display Area of the package of which 60% shall cover pictorial health warning and 25% shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area**. However, it is evident from the Panchanama dated 04.11.2015 that packages of the Cigarettes recovered from Container No. IALU2252554 under Panchanama dated 04.11.2015, were not having any type of pictorial health warnings. By the above stated acts, the subject 24,59,400 Cigarettes sticks, having market value of Rs. 1,36,02,450/- have been rendered liable to confiscation as per provisions of Section 111 (d) and Section 111 (o) of Customs Act, 1962. In view of above, the import of subject cigarettes in the manner described above constitutes an act of "smuggling" as defined in Section 2(39) of the Customs Act, 1962, the subject cigarettes are smuggled goods under provisions of Customs Act, 1962.

(ii) 5175 Kgs of Cast Iron ingots found in Container No. IALU2252554 have been imported illegally into India without the same being declared in the import documents and in Bill of Entry No. 3140016 dated 03.11.2015 and without being declared in the relevant Import General Manifest. Further it appears that the Cast Iron Ingots were placed behind Jumbo Bags of Brass and boxes of cigarettes to conceal the cigarettes from both sides. The above discussed acts appear to have rendered 5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-, liable for confiscation under the provisions of Section 111 (d), 111 (f), 111 (l) and Section 119 of Customs Act, 1962. In view of above, the import of subject Cast Iron Ingots in

the manner described above constitutes an act of "smuggling" as defined in Section 2(39) of the Customs Act, 1962, the subject Cast Iron Ingots are smuggled goods under provisions of Customs Act, 1962.

(iii) As per import documents and Bill of Entry No. 3140016 dated 03.11.2015 filed for clearance for warehousing of import goods, the quantity of "Mix Metal Brass Scrap with other impurities" was declared as 22,260 Kgs whereas upon examination vide Panchanama dated 18.02.2016 the quantity of mixed brass scrap has been ascertained to be 12,830 Kgs and that of Scrap of old and used Radiators as 1930 Kgs. Since the quantity of mixed brass scrap has been found to be substantially different, the value thereof declared in the import documents is not the correct value. Moreover, said mixed brass scrap packed in Jumbo Bags and scrap of old and used radiators was used in concealing smuggled cigarettes in container No. IALU2252554. As such, said 12,830 Kgs of mixed brass scrap and 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/- is liable to confiscation as per provisions of Section 111 (d), 111 (m) and Section 119 of Customs Act, 1962. In view of above, the import of subject Brass Scrap in the manner described above constitutes an act of "smuggling" as defined in Section 2(39) of the Customs Act, 1962, the subject Brass Scrap are smuggled goods under provisions of Customs Act, 1962.

8. Duties of Customs leviable on Goods:

8.1 M/s. Krishna Brass Industries, Jamnagar is registered as 100% EOU in Central Excise, AR-II, Division Jamnagar of Rajkot Commissionerate and is holding licence F. No. VIII/40-03/KBI/2014-15 dated 17.02.2015 for private bonded warehouse under Section 58 of Customs Act, 1962 with permission to manufacture in bond in terms of Section 65 of Customs Act, 1962. The said unit has executed Bond (Register Sr. No. 4/2014-15 dated 18.02.2015 of Office of Assistant Commissioner, Central Excise, Jamnagar) of Rs. 100 Lakhs in form B-17 for removal of goods at concessional rate of duty. The said unit got issued "**Certificate for Procurement and Movement of Imported Goods / Excisable Goods without Payment of Duty**" bearing Sr. No. 16 and date 02.11.2015 from Jurisdictional Central Excise Authority in terms of Notification No. 52/2003-Cus dated 31.03.2003. The said Procurement Certificate allowed **22.260 MT of "Mix metal brass scrap with other impurities"** imported in Container bearing No. IALU2252554 to be cleared to from Customs without payment of duty in terms of Notification No. 52/2003-Cus dated 31.03.2003. On the basis of said Procurement Certificate, Bill of Entry No. 3140016 dated 03.11.2015 was filed by M/s. Krishna Brass Industries, Jamnagar seeking exemption from duty under Notification No. 52/2003-Cus dated 31.03.2003. However, examination of the cargo of the Container No. IALU2252554, by officers on 04.11.2015, revealed that 24,59,400 Cigarettes Sticks, and 5175 Kgs of Cast Iron ingots were smuggled along with 12,830 Kgs Mixed Brass Scrap and 1930 Kgs of Scrap of old and used Radiators in the said container which were used to conceal the prohibited goods cigarettes. As the description and quantity of actual import goods of Container No. IALU2252554 were different from the description and quantity of goods allowed to be cleared without payment of duty from Customs vide Procurement Certificate, the said Procurement Certificate bearing No. 16 dated 02.11.2015 is liable to be not treated as valid document for granting exemption from duty to goods (i.e. **24,59,400 Cigarettes Sticks, 5175 Kgs of Cast Iron ingots, 12,830 Kgs Mixed Brass Scrap and 1930 Kgs of Scrap of old and used Radiators**) imported in Container No. IALU2252554 in terms of Notification No. 52/2003-Cus dated 31.03.2003. Moreover, M/s. Krishna Brass Industries has contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules 1993, in as much actual description, quantity and value of import goods was not declared in Bill of Entry No. 3140016 dated 03.11.2015. By these acts, condition No. 1 of B-17 Bond (Sr. No. 4/2014-15 dated 18.02.2015) executed with Assistant Commissioner, Central Excise, Jamnagar is violated in respect of import goods of Container No. IALU2252554, and as such, exemption in terms of Notification No. 52/2003-Cus dated 31.03.2003 is liable to be denied to M/s. Krishna Brass Industries, Jamnagar in respect of said import consignment consisting of 24,59,400 Cigarettes Sticks, 5175 Kgs of Cast Iron ingots, 12,830 Kgs Mixed

Brass Scrap and 1930 Kgs of Scrap of old and used Radiators for exemption from levy of Customs Duty and the assessment of duty in Bill of Entry No. 3140016 dated 03.11.2015 is liable to be done without considering Procurement Certificate and provisions of Notification No. 52/2003-Cus dated 31.03.2003.

8.2 Bill of Entry No. 3140016 dated 03.11.2015 was filed on behalf of M/s. Krishna Brass Industries, Jamnagar for clearance for warehousing of goods imported in Container bearing No. IALU2252554. The description of the goods in the Bill of Entry and in the import documents was declared as "Mix metal brass scrap with other impurities". However, the actual goods found stuffed in Container bearing No. IALU2252554 were 24,59,400 Cigarettes Sticks, concealed with the help of 12,830 Kgs Mixed Brass Scrap, 1930 Kgs of Scrap of old and used Radiators along with 5175 Kgs of Cast Iron ingots. Mr. Shailesh Patel, Power of Attorney Holder of M/s. Krishna Brass Industries, Jamnagar has admitted in his statement that he, on being lured by one Mr. Shoyaib, planned to smuggle cigarettes in guise of Brass Scrap. With a view to defrauding the revenue, the description of goods in the Commercial Invoice No. AGMT/021/2015, was willfully mis-stated as "Mix metal brass scrap with other impurities" even though actual goods intended to be imported illegally in the container were Cigarettes. The length of the said Cigarettes was found to be 100 MM, therefore they are, classifiable under CTI 24022090. All types of Cast Iron in primary form merit classification and CTI 72015010. The detailed calculation of duties of customs not levied on Cigarettes, Cast Iron Ingots and Mixed Brass Scrap & Scrap of old and used Radiators is set out in the Annexure IV &I, Annexure II and Annexure III, respectively, to Notice. However, since subject smuggled Cigarettes, Caste Iron Ingots and Mixed Metal Brass Scrap recovered under Panchanama dated 04.11.2015, as discussed at Para 7.2 above are liable for confiscation and therefore, no duty is being demanded in respect of the subject goods in SCN.

9. PRE-TRIAL DISPOSAL OF THE SEIZED FOREIGN ORIGIN CIGARETTES

Neither M/s. Krishna Brass Industries nor any other persons came forward to get the cigarettes released from Customs after seizure. Cigarettes are of perishable nature goods. Therefore action for post-seizure disposal of the seized Cigarettes of imported in Container No. IALU2252554 was initiated by DRI, Gandhidham. The DRI, Gandhidham had filed an application for disposal of seized goods under Section 110 (1a) and Section 110 (1b), before the Executive Magistrate, Mundra (Kutch) on 16.11.2015 for inventory verification for pre-trial disposal of the seized cigarettes. Port Health Officer, Mundra Port has also issued Certificate bearing NO-CHM/9898 to 9917/2015 dated 17.11.2015 in respect of the subject seized cigarettes wherein the said cigarettes are found to be free from any external spots or stains or fungus and that the tobacco was dry and free flowing and that the shelf life of the cigarettes was 9 months. The PHO has further suggested that Cigarette Packaging and labeling before disposal has to comply with Cigarettes and other Tobacco Products (Packaging and Labeling) Rules 2008 and Cigarettes and Other Tobacco Products (Packaging and Labeling) Amendment Rules 2014. Inventory of the seized cigarettes (24,59,400 Cigarette sticks packed in 12,297 packets) was prepared in presence of Executive Magistrate on 05.12.2015. Consequently, Commissioner of Customs, Customs House, AP & SEZ, Mundra has been requested to initiate auction of the seized cigarettes. Assistant Commissioner of Customs (Dock Preventive), AP & SEZ, Mundra has informed vide letter F. No. S/DP-241/DRI/Cigarettes/SBIRD/2015-16 dated 18.04.2016 that the procedure of disposal is under process in respect of the subject cigarettes.

10. Roles of various persons and liability to penalties

10.1 M/s. Krishna Brass Industries, Jamnagar and its proprietor Shri Vijay Vasrambhai Sabhaya: M/s. Krishna Brass Industries, Jamnagar being a proprietary concern, its proprietor is responsible for all acts of commission and omissions. He used to approve and finalize the contracts for sale of finished goods and for purchase import of raw materials i.e. mix metal brass scrap. 24,59,400 cigarettes sticks have been illegally smuggled in container No. IALU2252554 in the name of M/s. Krishna Brass Industries and attempted to be cleared under Bill of Entry No. 3140016 dated 03.11.2015. In his

statements recorded under Section 108 of Customs Act, 1962, he has stated that he used to inform Mr. Ankit Changani of M/s. Amardeep Exports, Jamnagar about his brass requirement and Mr. Ankitbhai used to contact supplier and that thereafter he used to receive Copy of Contract on his email. He did not fully cooperate in the investigation. In his statement he has tried to shift complete blame on Mr. Shailesh Patel stating that he had made him Partner in M/s. Krishna Brass Industries and he was Power of Attorney Holder and that Shri Shailesh Patel was looking after all import related work. However, he himself has admitted in his statements that they have not intimated about any Partnership Deed in respect of M/s. Krishna Brass Industries to Central Excise Department or to Sales Tax Department, Income tax Department, or Directorate General of Foreign Trade or Office of Development Commissioner KASEZ, Kandla or Customs Department. Neither they have intimated about this to their Customs Broker nor they have got amended PAN Card or Import Export Code or Central Excise Registration, Licence for Bonded premises, B-17 Bond filed with Central Excise Department in the name of M/s. Krishna Brass Industries, Jamnagar. As such M/s. Krishna Brass Industries, Jamnagar can't be considered as Partnership firm. It still was Proprietary concern and Shri Vijay Patel its proprietor. It was Mr. Vijay Sabhaya who used to sign the import contracts. He himself used to talk to Customs Broker. Shri Sabu George of Customs Broker, M/s. Lara Exim Pvt Ltd., has stated in his statement that Shri Vijay Patel, Proprietor of M/s. Krishna Brass Industries had contacted him on his mobile no. 9426214521 on Monday (02.11.2015) and informed him that he would send documents pertaining to Container No. IALU2252554 and asked him for clearance for warehousing of the goods; that on Tuesday (03.11.2015) he received documents through Maruti courier and accordingly Bill of Entry No. 3140016 dated 03.11.2015 was filed; that Shri Vijay Patel enquired about clearance of container in evening (03.11.2015); that on 04.11.2015, on learning about the container being examined by DRI, Shri Vijay Patel phoned him and told that import matter was being looked after by Shri Shailesh Patel. The above narrated chain of events stated by Shri Sabu George has been confirmed by Shri Vijay Sabhaya (Patel) in his statement. These events clearly indicate that Shri Vijay Sabhaya was vehemently pursuing for clearance of the goods of container No. IALU2252554, from which smuggled cigarettes were recovered, until he came to know of examination of container by DRI and thereafter tried to shift the responsibility towards Mr. Shailesh Patel. Perusal of Bill of Lading No. EAMUN044235 dated 25.10.2015 reveals that Mr. Vijay Shabhaya has endorsed on its back side. In his statement recorded before DRI, he has admitted that he deleted data of his mobile handset and destroyed it, fearing that DRI might recover evidence from the handset. Even the mails from the mail box of M/s. Krishna Brass Industries have been deleted. The above narrated facts not only reveal that Shri Vijay Sabhaya himself was handling import related work of M/s. Krishna Brass Industries but also indicates that he was deeply involved in smuggling of Cigarettes. The above acts of commission and omission on part of M/s. Krishna Brass Industries, Jamnagar and its proprietor Shri Vijay Vasrambhai Sabhaya have rendered (1) 24,59,400 Cigarettes sticks, having market value of Rs. 1,36,02,450/- liable to confiscation as per provisions of Section 111 (f), 111 (l), 111 (j), 111 (i), 111 (d) and 111 (o) of Customs Act, 1962, (2) 5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/- liable to confiscation as per provisions of Section 111 (f), 111 (l) and 111 (i) of Customs Act, 1962, (3) 12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/- liable to confiscation as per provisions of Section 111 (m) and Section 119 of Customs Act, 1962 and themselves i.e. M/s. Krishna Brass Industries, Jamnagar and its Proprietor Mr. Vijay Vasrambhai Sabhaya (Patel) liable for Penalty under provisions of Section 112(a) of Customs Act, 1962.

The above mentioned act of mis-declaration was done with intention to evade payment of appropriate customs duty on the above mentioned goods. Similarly duty was attempted to be evaded on "brass scrap" by way of mis-declaration in its quantity and value. Total duty amount of Rs. 1,25,57,897/- was attempted to be evaded by M/s. Krishna Brass Industries, Jamnagar by attempting to clear the smuggled cigarettes by making willful mis-declarations in Bill of Entry No. 3140016 dated 03.11.2015. Mr. Vijay Sabhaya is also liable to penalty under Section 114 AA of Customs Act, 1962 for use of false and incorrect invoice, Bill of Lading and making false declarations in Bill of Entry No. 3140016 dated 03.11.2015.

10.2 Mr. Shailesh Patel: Mr. Shailesh Patel has stated in his statements recorded under Section 108 of Customs Act, 1962 that during 2015 he went to Mumbai; that in one Bar, he met one person Mr. Shoyaib; that he was lured by Mr. Shoyaib into smuggling of cigarettes for which Rs. 8 to 10 Lacs were offered to him per container. Mr. Shailesh Patel, in connivance with Mr. Shoyaib of Mumbai, hatched the conspiracy to smuggle cigarettes into India. To manage import export procedure for smuggling cigarettes he joined M/s. Krishna Brass Industries, Jamnagar during July August 2015 and claimed to have signed Partnership Deed and obtained its Power of Attorney. These facts were also corroborated by Mr. Vijay Sabhaya in his statements. As per the conspiracy the cigarettes were dispatched on the instructions of Mr. Shoyaib and Mr. Shailesh Patel in container No. IALU2252554 which were attempted to be cleared from Customs Mundra vide warehouse Bill of Entry No. 3140016 dated 03.11.2015. The said 24, 59, 400 smuggled cigarette sticks packed in 12,297 packets were to be taken out from container en route to Jamnagar by Mr. Shoyaib and Mr. Shailesh Patel. Not only this, he even destroyed crucial evidences in form of mobile handset which he used to communicate with Mr. Shoyaib. He also did not fully cooperate with investigation and did not provide any useful leads to reach to Mr. Shoyaib. The smuggled cigarettes even did not bear mandatory pictorial warnings on their packets and thereby contravened provisions of Tobacco and Other Products (Packaging & Labeling) Rules 2008 & Tobacco and Other Products (Packaging & Labeling) Amendment Rules 2014. The above stated acts of commission and omission on part of Mr. Shailesh have rendered (1) **24,59,400 Cigarettes sticks, having market value of Rs. 1,36,02,450/-** liable to confiscation as per provisions of Section 111 (f), 111 (l), 111 (j), 111 (i), 111 (d) and 111(o) of Customs Act, 1962, (2) **5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-** liable to confiscation as per provisions of Section 111 (f), 111 (l) and 111 (i) of Customs Act, 1962, (3). **12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/-** liable to confiscation as per provisions of Section 111 (m) and Section 119 of Customs Act, 1962 and consequently these acts have rendered himself i.e. Mr. Shailesh Patel liable for Penalty under provisions of Section 112(a) of Customs Act, 1962. Mr. Shailesh Patel is also liable to penalty under Section 114 AA of Customs Act, 1962 for causing to make and using false and incorrect invoice, Bill of Lading and making false declarations in Bill of Entry No. 3140016 dated 03.11.2015.

10.3 Shri Ankit D. Changani:- Mr. Vijay Sabhaya has stated in his statements that his firm M/s. Krishna Brass Industries was converted to 100% EOU on the advice of Mr. Ankit Changani around one year ago. He further stated he used to inform Mr. Ankit about his brass requirement, thereafter Mr. Ankitbhai used to contact the suppliers and then he used to receive contract copy on his email. He confirmed that that all his imports have been brought through Ankitbhai. Even services of Customs Broker M/s. Lara Exim Pvt Ltd., were arranged through Mr. Ankit. In the instant case, the subject consignment of smuggled cigarettes was sought clearance from Mundra Customs under EOU scheme under which container is not opened for examination at Port Customs. The conspiracy was to take out the cigarettes en route to factory of M/s. Krishna Brass Industries at Jamnagar. In such circumstances the facts that Mr. Ankit Changani advised Mr. Vijay Sabhaya to convert his firm into a 100% EOU, order for import being placed through him, and all imports actually imported through him indicate that he actively abetted smuggling of the subject cigarettes in container No. IALU2252554. It was he, who was in direct contact with suppliers who supplied cigarettes in container No. IALU2252554 in guise of Brass Scrap. Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai who dispatched container No. IALU2252554 stuffed with cigarettes was in direct contact of Mr. Ankit Changani who himself used to import goods from him. From the above discussed facts it appears that the subject cigarettes could not have been stuffed in container No. IALU2252554 without intent and consent of Mr. Ankit Changani.

The above stated acts of commission on part of Mr. Ankit D. Changani have rendered (1) **24,59,400 Cigarettes sticks, having market value of Rs. 1,36,02,450/-** liable to confiscation as per provisions of Section 111 (f), 111 (l), 111 (j), 111 (i), 111 (d) and 111 (o) of Customs Act, 1962, (2) **5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-** liable to confiscation as per provisions of Section 111 (f), 111 (l) and 111 (i) of Customs Act, 1962, (3) **12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old**

and used Radiators having aggregate market value of Rs. 43,57,490/- liable to confiscation as per provisions of Section 111 (m) and Section 119 of Customs Act, 1962 and consequently rendered himself i.e. Mr. Ankit D. Changani liable for penalty under provisions of Section 112(a) of Customs Act, 1962.

10.4 Mr. Anil Parmar:- Mr. Jayshukh Ranpariya in his statements told that earlier Mr. Anil Parmar used to work with him and used to handle his work pertaining to wooden gift articles and that later he went to UAE where he has started work in the name of M/s. Alliance Metal General Trading LLC, Dubai. The same facts were stated by Mr. Ankit D Changani and Mr. Vijay Patel in their respective statements. They regularly used to import from Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai. The Commercial Invoice No. AMGT/021/2015 dated 18.10.2015, and Packing List dated 18.10.2015, Country of Origin Certificate dated 18.10.2015 in respect of consignment of Cigarettes, Cast Iron Scrap and Brass Scrap smuggled in container No. IALU2252554 bore his signatures which are similar to his signatures in import documents of earlier consignments purchased by M/s. Krishna Brass Industries. Moreover, any Metal Scrap being categorized a Hazardous waste as per **Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008** every import consignments of Brass Metal Scrap is required to accompanied by Transboundary Movement Document in Form 9 (to be issued by Shipper) in terms of Rule 16 of said Rules ibid. The import documents of this consignments (Container No. IALU2252554) also included Transboundary Movement documents in Form 9 in which contact person on behalf of Shipper M/s. Alliance Metal General Trading LLC, Dubai is mentioned as Mr. Anil Parmar. Mr. Jayshukh Ranpariya and Mr. Bhupinder Saini of M/s. Radiant Maritime India Pvt. Ltd., Gandhidham have independently confirmed in their statements that 00971522726864 was mobile No. of Mr. Anil Parmar. Further, Mr. Bhupinder Saini has also informed that container Nos. TTNU3535220 and IPXU3062264 were recalled on the instructions of Mr. Anil Parmar vide letter dated 05.11.2015. Summons dated 03.03.2016, 08.04.2016 and 25.04.2016 were issued requiring him to appear for recording of statement but he did not honour the summons. Though his statement could not be recorded, his active role in dispatching consignments of cigarettes in containers No. IALU2252554 in concealed manner and other consignments of cigarettes in container Nos. TTNU3535220 & IPXU3062264 clearly emerges on the basis of available documents, as discussed above.

The above stated acts of commission on part of Mr. Anil Parmar have rendered (1) **24,59,400 Cigarette sticks, having market value of Rs. 1,36,02,450/-** liable to confiscation as per provisions of Section 111 (f), 111 (l), 111 (j), 111 (i), 111 (d) and 111 (o) of Customs Act, 1962, (2) **5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-** liable to confiscation as per provisions of Section 111 (f), 111 (l) and 111 (i) of Customs Act, 1962, (3) **12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/-** liable to confiscation as per provisions of Section 111 (m) and Section 119 of Customs Act, 1962 and consequently rendered himself i.e. Mr. Anil Parmar liable for penalty under provisions of Section 112(a) of Customs Act, 1962. Mr. Anil Parmar is also liable to penalty under Section 114 AA of Customs Act, 1962 for making false and incorrect Commercial Invoice, other import documents and Form 9 which were used in import and in attempt of getting subject smuggled cigarettes cleared vide Bill of Entry No. 3140016 dated 03.11.2015.

11.1 In view of the above vide Show Cause Notice F. No.DRI/AZU/GRU/CIGARETTES/INT-42/2015-16 dated 02.05.2016, M/s. Krishna Brass Industries, Plot No. 3962, GIDC, Phase-III, Dared, Jamnagar (IEC No. 2414004193) and its proprietor **Mr. Vijay Vasram Shabhaya** are called upon to show cause in writing to the Principal Commissioner of Customs having his office situated at Mundra Port & SEZ, Ground Floor & 1st Floor, 5AE, Port User Building, Custom House, Mundra Port, District Kutch -370421, within thirty days from the receipt of this notice as to why:-

(i) **24,59,400 cigarette sticks** (in 12,297 packets each having 10 smaller packets) having market value Rs. 1,36,02,450/-, smuggled into India in Container No.

IALU2252554 and attempted to be cleared from Port Customs under Warehouse Bill of Entry No. 3140016 dated 03.11.2015 should not be confiscated under Sections 111 (d), 111 (f), 111 (j), 111 (i), 111 (l) and 111 (o) of Customs Act, 1962.

(ii) **5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-**, should not be confiscated as per provisions of Section 111 (f), 111 (l) and Section 119 of Customs Act, 1962, and that **12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/-** should not be confiscated as per provisions of Section 111 (m) and Section 119 of Customs Act, 1962;

(iii) Penalty should not be imposed on them under Section 112(a) and Section 114 AA of Customs Act, 1962;

11.2 Further, vide the said Show Cause Notice, **Mr. Shailesh Damjibhai Patel (Sanghani)**, Power of Attorney holder of M/s. Krishna Brass Industries, Jamnagar residing at Gokul Nagar, Street No.2 (near St No.6), Near Maharaja Pan, Radar Road, Jamnagar-361004 is hereby called upon to show cause in writing to the Principal Commissioner of Customs having his office situated at Mundra Port & SEZ, Ground Floor & 1st Floor, 5AE, Port User Building, Custom House, Mundra Port, District Kutch -370421, within thirty days from the receipt of this notice as to why:-

(i) **24,59,400 cigarette sticks (in 12,297 packets each having 10 smaller packets)** having market value Rs. 1,36,02,450/-, smuggled into India in Container No. IALU2252554 and attempted to be cleared from Port Customs under Warehouse Bill of Entry No. 3140016 dated 03.11.2015 should not be confiscated under Sections 111 (d), 111 (f), 111 (j), 111 (i), 111 (l) and 111 (o) of Customs Act, 1962.

(ii) **5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-**, should not be confiscated as per provisions of Section 111 (f), 111 (l) and Section 119 of Customs Act, 1962, and that **12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/-** should not be confiscated as per provisions of Section 111 (m) and Section 119 of Customs Act, 1962;

(iii) Penalty should not be imposed on them under Section 112(a) and Section 114 AA of Customs Act, 1962;

11.3 Further, vide the said Show Cause Notice, **Mr. Anil Mavjibhai Parmar** residing at 90, opposite Shamshan wadi Area, Dhrol, Kalavad, Jamnagar is hereby called upon to show cause in writing to Principal Commissioner of Customs having his office situated at Mundra Port & SEZ, Ground Floor & 1st Floor, 5AE, Port User Building, Custom House, Mundra Port, District Kutch -370421, within thirty days from the receipt of this notice as to why penalty should not be imposed on him under Sections 112(a) and 114AA of the Customs Act, 1962 as discussed above in Notice.

11.4 Also, vide the said Show Cause Notice, **Mr. Ankit D. Changani**, residing at 1st Slope, opp Ram Mandir, Gulab Nagar, Jamnagar is hereby called upon to show cause in writing to Principal Commissioner of Customs having his office situated at Mundra Port & SEZ, Ground Floor & 1st Floor, 5AE, Port User Building, Custom House, Mundra Port, District Kutch -370421, within thirty days from the receipt of this notice as to why penalty should not be imposed on him under Sections 112(a) of the Customs Act, 1962 as discussed above in Notice.

12. The said Show Cause Notice dated 02.05.2016 was adjudicated by the Commissioner of Customs, Mundra vide Order-in-Original No. MUN-CUSTM-000-COM-02-19-20 dated 15.05.2019 wherein he passed the following order:

- i. I order absolute confiscation of cigarettes total **24,59,400 (in 12,297 packets each having 10 smaller packets)** having market value Rs. 1,36,02,450/-, smuggled into India in Container No. IALU2252554 and attempted to be cleared under Warehouse

Bill of Entry No. 3140016 dated 03.11.2015, under Sections 111 (d), 111 (f), 111 (j), 111 (i), 111 (l) and 111 (o) of Customs Act, 1962. As the said seized cigarettes have subsequently been disposed through e-auction, therefore, I order appropriation of the amount of Rs. 26,25,000/-, realized as sale proceeds of said seized cigarettes, in terms of Section 126 of the Customs Act, 1962.

- ii. I order absolute confiscation of **5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-**, under the provisions of Section 111 (f), 111(i), 111 (l) and Section 119 of Customs Act, 1962, and **12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/-**, under the provisions of Section 111 (m) and Section 119 of Customs Act, 1962.
- iii. I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) under Section 112(a) of Customs Act, 1962 and penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) under Section 114AA of the Customs Act, 1962, on M/s. Krishna Brass Industries, Plot No. 3962, GIDC, Phase-III, Dared, Jamnagar (IEC No. 2414004193) and its proprietor Mr. Vijay Vasram Shabhaya(Patel).
- iv. I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) under Section 112(a) of Customs Act, 1962 and penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) under Section 114AA of the Customs Act, 1962, on Mr. Shailesh Damjibhai Patel (Sanghani), Power of Attorney holder of M/s. Krishna Brass Industries, Jamnagar residing at Gokul Nagar, Street No.2 (near St No.6), Near Maharaja Pan, Radar Road, Jamnagar-361004.
- v. I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 112(a) of Customs Act, 1962 on Shri Ankit D. Changani Partner M/s. Amardeep Exports dated 15.05.2019, the noticee i.e. Shri Ankit D. Changani preferred appeal vide Customs Appeal No. 11904 of 2019 before the Hon'ble CESTAT, West Zonal Bench at Ahmedabad.
- vi. I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 112(a) of Customs Act, 1962 and penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 114AA of the Customs Act, 1962, on Shri Anil Mavjibhai Parmar residing at 90, opposite Shamshan wadi Area, Dhrol, Kalavad, Jamnagar.

13. Aggrieved with the said Order-in-Original No. MUN-CUSTM-000-COM-02-19-20 dated 15.05.2019, the noticee i.e. Shri Ankit D. Changani preferred appeal vide Customs Appeal No. 11904 of 2019 before the Hon'ble CESTAT, West Zonal Bench at Ahmedabad.

14. The Hon'ble CESTAT, West Zonal Bench at Ahmedabad vide Final Order No. A/10096/2022 dated 10.02.2022 set aside the impugned order and allowed the appeal by way of remand to the adjudicating authority for passing a fresh order. Para 3 of the said Final Order is reproduced herewith:-

3. I have carefully considered the submissions made by both the sides and perused the records. I find that, it is fact on record that the appellant could not avail the opportunity of personal hearing because of the miscommunication of the hearing notice, rather the reply filed by the appellant was also not considered by the adjudicating authority. Therefore, in the interest of justice, one more opportunity can be given to the appellant to defend their case before the adjudicating authority, therefore, the impugned order is set aside. Appeal is allowed by way of remand for passing a fresh de novo order after giving him sufficient opportunity of personal hearing and also opportunity for filing the written submissions, if any, required.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

15.1 An opportunity of personal hearing in this matter has been given to the noticee i.e. Shri Ankit D. Changani in pursuant of captioned order of CESTAT. Personal Hearing in the subject matter was held on 22.02.2023, which was attended by Shri R. Subramanya, Advocate on behalf of noticee and reiterated the submissions made vide letter dated 21.12.2022. He further submitted that Shri Ankit D. Changani or his partnership firm i.e. Amardeep Exports is not at all involved in the import of goods in any manner, and therefore,

the penalty under Section 112(a) for improper imports cannot be levied on Shri Ankit D. Changani. He requested to drop the proceedings initiated against the noticee Ankit D. Changani and also to drop the proposals to impose penalty under Section 112(a).

15.2 They have submitted that the Hon'ble CESTAT, Ahmedabad vide the Order No.A/10096/2022 dated 10.02.2022 in Appeals No. C/11904/2019 has set aside the OIO to the extent of Noticee No. 5, i.e. Ankit D Changani, Partner of Amardeep Exports , Jamnagar, and remanded the matter back to the Adjudicating Authority for re-adjudication after following the principles of natural justice. In this regard, they wish to submit their defence replies as below:

15.2.1 In the month of November, 2015, the officers of DRI, had intercepted a container bearing No. IALU2252554, and the goods imported in the said container were examined at Mundra Port vide panchanama dated 04.11.2015. The description of the goods imported in Container bearing no. IALU2252554 and sought clearance for warehousing under Bill of Entry No. 3140016 dated 03.01.2015 was given as "Mix Metal Brass Scrap with other impurities" as per Bill of Lading, Commercial Invoice and Bill of Entry. However, upon examination by the officers of DRI, the said container was found stuffed with 60 boxes of Cigarettes concealed behind the Jumbo Bags containing Brass Scrap.

15.2.2 They submit that they were not aware of the imported cigarettes behind loaded into this container, along with the imported goods. The statements were recorded under duress to the extent of the knowledge of having known about the cigarettes being loaded in the container at the supplier's end. He also submits that two of his statements were recorded, and he never admitted to the fact that he was in any way involved in the smuggling of cigarettes or that the seized cigarettes belongs to him. Also, in due course of business, some payments were not made and some payments made. This is quite normal in trading business, and mutual between the supplier and the trader. He also mentioned that as he is a partner in an EOU, concerned with import and export business, he used to talk with foreign suppliers/buyers and help Mr. Vijay Sabhaya in placing orders for import and in findings orders for export. He was not ware about the contents of the above said container.

15.2.3 It is also placed on record that no one has come forward to claim the seized prohibited goods and the disposal process was being undertaken as on the date of issuance of the SCN. We have neither claimed nor followed up with any status of the disposal of such cigarettes, as we are not concerned with it. They are neither concerned with cigarettes nor with mixed metal brass scrap. They submit that they were not at all aware of the mis-declaration and about the foreign brand cigarettes contained in the said containers. They submit that this was for the first time he came to know about the foreign cigarettes concealed in the container, when they called for recording of statement.

15.2.4. They submit that penalty under Section 112(a) is imposed on them, which reads as:

"Section 112-Penalty for improper importation of goods, etc. -Any person, -(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act,..."

In the present case, they had acted in their capacity and there is nothing on record to indicate that they had any prior knowledge of the possible mis-declaration in the imported consignment. Further, the charge of abetment against them can be sustained only if any person who, in relation to any goods abets the doing or omission of an act which would render such goods liable to confiscation. Apart from the allegation of abetment, there is no allegation or evidence regarding the noticee's act or omission which can be considered as abetting the improper importation. In other words, the allegation is that noticee omission to properly check the consignment resulted in the goods liable for confiscation. But, in the present case, the noticee was present at the time of examination of the imported consignments, which he was doing on behalf of the importers. The proposition of imposing penalties on the noticee is therefore not tenable in the facts and circumstances of the case.

The noticee had only acted based on the documents received by him from supplier, and handed over to the CHA, and also filed the bill of entry for clearance of mixed metal brass scrap. He had no means to know the contents of the imported containers to be other than declared in the documents, till the time it was opened during the course of the examination by the officers of DRI.

15.2.5 They submit that in the case of Lemuir Air Express, New Delhi V. CC, New Delhi reported in 1986(26) E.L.T. 608(Tribunal), the Tribunal held that when the air cargo agent had no knowledge about the contents of the consignments and relied upon the information passed on by the exporter to them penalty cannot be imposed on them. In Syndicate Shipping Services (P) Ltd. V. CC (Imports), Chennai reported in 2004(171) E.L.T. 72(Tri. Chennai), the Tribunal held that there should be a case of intentionally aiding the commission of crime to hold the charge of abetment. In the absence of such intention being established penalty can not be imposed. In Anchor Logistics Vs. CC reported in 2013 (290) E.L.T. 334(Guj.), the Hon'ble Gujurat High Court held that in the absence of prior knowledge of CHA regarding mis-declaration of the consignment no penalty can be levied. The noticee further submit that considering the above analysis and discussion, the charge of abetment cannot be sustained against the noticee in the facts and circumstances of the case.

15.2.6 They wish to submit that he is not the importer, and he has not filed any bill of entry for the offending goods. Therefore, the provisions of Section 112(a) of the Customs Act, cannot be applied on him for imposing penalty. They wish place reliance on the following settled law positions:

1. Manoj Kumar Vs CC, New Delhi-2017(347) ELT 640(Tri-Del)
2. Nalin Z Mehta Vs CC-2014(303) ELT 267(Tri-Ahmd)
3. Manisha Karia Vs CC-2014 (301) ELT 415 (Tri-mum)
4. Bashayir Vs CC-2006 (206) ELT 541(Tri-Chennai)
5. Narendra B Jain Vs CC-2014 (304) ELT 563 (Tri-Mum)

15.2.7 They submitted that they have no role to play as regards the declarations required to be made to the Customs Authorities, no penalties upon him can be called for, the noticee is also not the financer of the consignments, since he cannot be said to done any act or omitted to do as act which have rendered the goods liable to confiscation.

DISCUSSIONS AND FINDINGS

16. I have gone through the Show Cause Notice, Order-in-Original No. MUN-CUSTM-000-COM-02-19-20 dated 15.05.2019 passed by my predecessor, Final Order No. A/10096/2022 dated 10.02.2022 issued by the Hon'ble CESTAT, West Zonal Bench at Ahmedabad, the submissions made during the personal hearing on 22.02.2023 and the written submissions dated 21.12.2022 filed by the noticee i.e. Shri Ankit D. Changani. From these, I find that the present proceedings is de novo proceedings in pursuant to the captioned order of the CESTAT in respect of noticee i.e. Shri Ankit D. Changani. The CESTAT vide its order dated 10.02.2022 directed to adjudicating authority to give one more opportunity to defend their case and shall pass a fresh de novo order after giving sufficient opportunity of personal hearing and written submissions.

17. This case was initially adjudicated vide Order-in-Original No. MUN-CUSTM-000-COM-02-19-20 dated 15.05.2019 wherein adjudicating authority has passed the following order:

- i. I order absolute confiscation of cigarettes total **24,59,400** (in 12,297 packets each having 10 smaller packets) having market value Rs. 1,36,02,450/-, smuggled into India in Container No. IALU2252554 and attempted to be cleared under Warehouse Bill of Entry No. 3140016 dated 03.11.2015, under Sections 111 (d), 111 (f), 111 (j), 111 (i), 111 (l) and 111 (o) of Customs Act, 1962. As the said seized cigarettes have subsequently been disposed through e-auction, therefore, I order appropriation of the

amount of Rs. 26,25,000/-, realized as sale proceeds of said seized cigarettes, in terms of Section 126 of the Customs Act, 1962.

- ii. I order absolute confiscation of **5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-**, under the provisions of Section 111 (f), 111(i), 111 (l) and Section 119 of Customs Act, 1962, and **12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/-**, under the provisions of Section 111 (m) and Section 119 of Customs Act, 1962.
- iii. I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) under Section 112(a) of Customs Act, 1962 and penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) under Section 114AA of the Customs Act, 1962, on M/s. Krishna Brass Industries, Plot No. 3962, GIDC, Phase-III, Dared, Jamnagar (IEC No. 2414004193) and its proprietor Mr. Vijay Vasram Sabhaya(Patel).
- iv. I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) under Section 112(a) of Customs Act, 1962 and penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) under Section 114AA of the Customs Act, 1962, on Mr. Shailesh Damjibhai Patel (Sanghani), Power of Attorney holder of M/s. Krishna Brass Industries, Jamnagar residing at Gokul Nagar, Street No.2 (near St No.6), Near Maharaja Pan, Radar Road, Jamnagar-361004.
- v. I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 112(a) of Customs Act, 1962 on Shri Ankit D. Changani Partner M/s. Amardeep Exports (100%) EOU, Plot No. 414 & 417, Phase-II, GIDC, Dared, Jamnagar residing at 1st Slope (*pehlo dhaliyo*), opp Ram Mandir, Gulab Nagar, Jamnagar.
- vi. I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 112(a) of Customs Act, 1962 and penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 114AA of the Customs Act, 1962, on Shri Anil Mavjibhai Parmar residing at 90, opposite Shamshan wadi Area, Dhrol, Kalavad, Jamnagar.

18. The noticee i.e. Shri Ankit D. Changani filed an appeal against this order vide Appeal No. 11904 of 2019 in the Tribunal and Hon'ble CESTAT, West Zonal Bench at Ahmedabad vide its order No. A/10096/2022 dated 10.02.2022 remanded the case to original authority with direction to give one more opportunity to defend their case and shall pass a fresh de novo order after giving sufficient opportunity of personal hearing and written submissions.

19. In compliance with the above order of Hon'ble CESTAT, wherein the matter is remanded for the limited purpose of deciding the penalty on the noticee i.e. Shri Ankit D. Changani, I proceed to examine the issue. I find that the only issue need to be decided in this case is in respect of noticee i.e. Shri Ankit D. Changani.

20. I find that the goods imported under BE No. 3140016 dated 03.11.2015 in Container no. IALU2252554 by the importer M/s. Krishna Brass Industries and declared as "Mix Metal Brass Scrap with other impurities" were examined by the officers of DRI, whereby it was found that 24,59,400 cigarettes sticks of various brands had been concealed behind jumbo bags containing brass scrap.

21. I find that the fact of smuggling of cigarettes in the guise of brass scrap has been categorically admitted by Shri Vijay Vasrambhai Sabhaya, Proprietor of M/s. Krishna Brass Industries, Jamnagar and Shri Shailesh Damjibhai Patel, Power of Attorney Holder of M/s. Krishna Brass Industries, Jamnagar, in their statements recorded under Section 108 of Customs Act, 1962. The investigation has uncovered a syndicate created for smuggling of cigarettes in the guise of brass scrap.

22. I find that Mr. Vijay Sabhaya has stated in his statements that his firm M/s. Krishna Brass Industries was converted to 100% EOU on the advice of Mr. Ankit Changani, Partner of M/s. Amardeep Exports (100% EOU) around one year ago. He further stated he used to inform Mr. Ankit about his brass requirement, thereafter Mr. Ankitbhai used to contact the

suppliers and then he used to receive contract copy on his email. He confirmed that that all his imports have been brought through Ankitbhai. Even services of Customs Broker M/s. Lara Exim Pvt Ltd., were arranged through Mr. Ankit. In the instant case, the subject consignment of smuggled cigarettes was sought clearance from Mundra Customs under EOU scheme under which container is not opened for examination at Port Customs. The conspiracy was to take out the cigarettes en route to factory of M/s. Krishna Brass Industries at Jamnagar. In such circumstances the facts that Mr. Ankit Changani advised Mr. Vijay Sabhaya to convert his firm into a 100% EOU, order for import being placed through him, and all imports actually imported through him indicate that he actively abetted smuggling of the subject cigarettes in container No. IALU2252554. It was he, who was in direct contact with suppliers who supplied cigarettes in container No. IALU2252554 in guise of Brass Scrap. Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai who dispatched container No. IALU2252554 stuffed with cigarettes was in direct contact of Mr. Ankit Changani who himself used to import goods from him. From the above discussed facts it appears that the subject cigarettes could not have been stuffed in container No. IALU2252554 without intent and consent of Mr. Ankit Changani.

23. Thus, the investigation has revealed that the importer Shri Vijay Vasrambhai Sabhaya, Proprietor of M/s. Krishna Brass Industries, Jamnagar and Shri Shailesh Damjibhai Patel, Power of Attorney Holder of M/s. Krishna Brass Industries, Jamnagar, in connivance with the middleman viz. Shri Ankit Dineshbhai Changani, Partner of M/s. Amardeep Exports (100% EOU), Jamnagar and Shri Anil Parmar, attempted to smuggle foreign origin cigarettes and willfully mis-stated the value, quantity and description of goods before the Customs authority at the time of import with a view to evade the applicable Customs duty.

24. I find that in addition to the consignment of cigarettes illegally imported in concealed manner in Container No. IALU2252554, two more consignments of Cigarettes were dispatched by the same Shipper to India in container Nos. IPXU3062264 & TTNU3535220 one in the name of M/s. Krishna Brass Industries, Jamnagar and the other in the name of M/s. Amardeep Exports, Jamnagar. It was revealed that the said two containers were loaded on MV Chicago from Jebel Ali Port for import to India to be discharged at Mundra Port. The said vessel arrived at Mundra Port on 07.11.2015, but by that time the consignees and the shipper had become aware of the seizure of cigarettes from Container No. IALU2252554 by DRI and Mr. Anil Parmar of M/s. Alliance Metal General Trading LLC, Dubai asked the Shipping line to recall the said two containers (IPXU3062264 & TTNU3535220). As such said two containers were not un-loaded at Mundra Port and returned back to Dubai. These facts have been independently confirmed by Mr. Bhupinder Singh Saini of M/s. Radiant Maritime India Pvt. Ltd., Gandhidham (*Shipping Line Agent*) and Mr. Sachin S. Naik of M/s. MBK Logistix Private Limited, Gandhidham (*vessel agent*) in their respective statements recorded on 18.01.2016 and 02.03.2016 under provisions of Section 108 of Customs Act, 1962.

25. The description of goods said to be stuffed in said two containers IPXU3062264 & TTNU3535220 was declared as "Mix metal brass scrap with other impurities" in Bills of Lading. The goods stuffed in containers on their return to Dubai were got inspected by Dubai Customs through Consulate General of India, Dubai. It has been informed by Consulate General of India, Dubai vide letter F. No. CE/IV/X/1/2015 dated 13.12.2015, that the said two containers IPXU3062264 & TTNU3535220 were inspected in presence of representative of Exporter (Shipper) and found to be full of Cigarettes. I find that smuggling syndicate involving Mr. Shailesh Patel, Mr. Vijay Sabhaya proprietor of M/s. Krishna Brass Industries, Mr. Shoyaib of Mumbai, Mr. Ankit Changani, Mr. Anil Pramar of M/s. Alliance Metal General Trading LLC, Dubai have illegally imported subject cigarettes in container No. IALU2252554 and thereafter attempted to smuggle more consignments of cigarettes in container No. IPXU3062264 & TTNU3535220 one in the name of M/s. Krishna Brass Industries and other in the name of M/s. Amardeep Exports.

26. Now coming to the issue of liability of penalty upon the said noticee i.e. Mr. Ankit Changani, I find that penalty has been proposed under Section 112(a) of Customs Act,

1962. As per Section 112(a) ibid, any person who abets or aids the commission of an act or omits to such an act, which makes the goods liable to confiscation under Section 111 of the Act, ibid, is liable to a penalty. It is brought out from facts that Shri Ankit Changani is the person who had acted as an middleman to smuggle foreign origin cigarettes in guise of brass scrap. I also find that on examination of two more containers i.e. IPXU3062264 & TTNU3535220, one in name of M/s. Amardeep Exports (100%) EOU, by Dubai Customs, these were found to be full of cigarettes. Thus, it is evident that Shri Ankit D. Changani, partner of M/s. Amardeep Exports (100%) EOU were full aware that the foreign origin cigarettes are being smuggled in the guise of brass scrap. The above stated acts of commission on part of Mr. Ankit D. Changani have rendered **(1) 24,59,400 Cigarettes sticks, having market value of Rs. 1,36,02,450/-** liable to confiscation as per provisions of Section 111 (f), 111 (l), 111 (j), 111 (i), 111 (d) and 111 (o) of Customs Act, 1962, **(2) 5175 Kgs of Cast Iron ingots, having market value of Rs. 1,81,125/-** liable to confiscation as per provisions of Section 111 (f), 111 (l) and 111 (i) of Customs Act, 1962, **(3) 12,830 Kgs of mixed brass scrap & 1930 Kgs of Scrap of old and used Radiators having aggregate market value of Rs. 43,57,490/-** liable to confiscation as per provisions of Section 111 (m) and Section 119 of Customs Act, 1962. As such, penalty under Section 112(a) is attracted in this case. Thus, I hold that for these acts of omission and commission, have rendered the goods liable to confiscation under Section 111 of Customs Act, 1962, I hold that Mr. Ankit D. Changani has rendered himself liable to penal action under Section 112 (a) of the Customs Act, 1962.

27. I find that the authorized representative of the Noticee i.e. Mr. Ankit D. Changani in their written defence submissions have placed reliance on various case laws/judgements in support of their contention on issue of imposition of penalty under Section 112(a) of Customs Act, 1962. They relied upon the following case laws:

1. Lemuir Air Express, New Delhi V. CC, New Delhi-1986(26) E.L.T. 608(Tribunal)
2. Syndicate Shipping Services (P) Ltd. V. CC (Imports)-2004(171) E.L.T. 72(Tri. Chennai)
3. Anchor Logistics Vs. CC-2013 (290) E.L.T. 334(Guj.)
4. ManojKumar Vs CC, New Delhi-2017(347) ELT 640(Tri-Del)
5. Nalin Z Mehta Vs CC-2014(303) ELT 267(Tri-Ahmd)
6. Manisha Karia Vs CC-2014 (301) ELT 415 (Tri-mum)
7. Bashayir Vs CC-2006 (206) ELT 541(Tri-Chennai)
8. Narendra B Jain Vs CC-2014 (304) ELT 563 (Tri-Mum)

In this regard, I am of the view that that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Ongoing through the above case laws, I find that those decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170) ELT 135(SC)] has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4 (SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision must be culled out from the facts involved in a given case. A decision, is an authority for what it decides and not what can logically be deduced therefrom.

28. I find that the remaining questions regarding confiscation of goods and imposition of penalty on other noticee(s) have already been decided vide Order-in-Original No. MUN-CUSTM-000-COM-02-19-20 dated 15.05.2019 and thus without going into the aspect of

confiscation of goods and imposition of penalty on other noticee(s) and abiding by the order of Hon'ble CESTAT, I pass the following order:

ORDER

- i. I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** under Section 112(a) of Customs Act, 1962 on Shri Ankit D. Changani Partner M/s. Amardeep Exports (100%) EOU, Plot No. 414 & 417, Phase-II, GIDC, Dared, Jamnagar residing at 1st Slope (pehlo dhaliyo), opp Ram Mandir, Gulab Nagar, Jamnagar.
29. The remaining portion of the Order-in-Original No. MUN-CUSTM-000-COM-02-19-20 dated 15.05.2019 will remain unchanged.
30. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

T. V. Ravi
(T.V. RAVI) 8/5/23
Commissioner of Customs
Custom House, Mundra

F.No. GEN/ADJ/COMM/193/2022-Adjn

Date:08.05.2023

By Speed Post with AD/ Hand Delivery

To,

1. Mr. Ankit D. Changani Partner M/s. Amardeep Exports (100%) EOU, Plot No. 414 & 417, Phase-II, GIDC, Dared, Jamnagar-361006.
2. Mr. Ankit D. Changani, 1st Slope (pehlo dhaliyo), opp Ram Mandir, Gulab Nagar, Jamnagar-361007.

Copy to:

1. The Chief Commissioner of Customs, CCO, Ahmedabad.
2. The Addl. Director, DRI, Ahmedabad Zonal Unit, Unit No. 15, Magnet Corporate Park, Near Sola Flyover, S.G. Highway, Thaltej, Ahmedabad-380054 (email-driazu@nic.in).
3. The Asst. Director, DRI, Regional Unit, Plot No. 193, Sector-IV, OSLO, Gandhidham-370201(email-driganru@nic.in).
4. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
5. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
6. Guard File